

AMENDED IN SENATE APRIL 29, 2003

SENATE BILL

No. 1021

Introduced by Senator Poochigian

February 21, 2003

An act to amend ~~Sections 6240 and~~ *Section* 16337 of, and to add Chapter 5 (commencing with Section 16500) to Part 4 of Division 9 of, the Probate Code, relating to ~~wills and~~ trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1021, as amended, Poochigian. ~~Wills and trusts~~ *Trusts*.

~~(1) Existing law provides a statutory will form and provides various hypothetical questions and answers to guide a person in using it. The existing statutory will form contains special provisions regarding the distribution of property to a person between the ages of 18 and 25 and providing for a custodian of assets under these circumstances.~~

~~This bill would revise the provisions described above regarding the distribution of property to a person between the ages 18 and 25 to make them applicable to any person under 26, and would thus permit a custodian of assets to be appointed under the statutory will form for a person under the age of 18.~~

~~(2) Existing~~

~~Existing law provides for the creation, modification, and termination of trusts, and regulates the acts of trustees in administering a trust. Existing law establishes provisions by which a trustee may give a notice of proposed action regarding certain matters.~~

~~This bill would revise and recast the provisions by which a trustee may give a notice of proposed action. The bill would enlarge the circumstances under which a notice of proposed action could be used, specify the form of the notice, to whom it is to be given, the~~

circumstances under which it is not to be used, and the methods by which a beneficiary may object to a proposed action.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. ~~Section 6240 of the Probate Code is amended to read:~~

~~6240. The following is the California Statutory Will form:~~

~~QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA
STATUTORY WILL~~

~~The following information, in question and answer form, is not a part of the California Statutory Will. It is designed to help you understand about Wills and to decide if this Will meets your needs. This Will is in a simple form. The complete text of each paragraph of this Will is printed at the end of the Will.~~

~~1. What happens if I die without a Will? If you die without a Will, what you own (your “assets”) in your name alone will be divided among your spouse, domestic partner, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets.~~

~~2. What can a Will do for me? In a Will you may designate who will receive your assets at your death. You may designate someone (called an “executor”) to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You may nominate someone (called a “guardian”) to raise your children who are under age 18. You may designate someone (called a “custodian”) to manage assets for your children until they reach any age between 18 and 25.~~

~~3. Does a Will avoid probate? No. With or without a Will, assets in your name alone usually go through the court probate process. The court’s first job is to determine if your Will is valid.~~

~~4. What is community property? Can I give away my share in my Will? If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. Your Will can only~~

1 ~~give away your one-half of community property. Your Will cannot~~
2 ~~give away your spouse's one-half of community property.~~

3 ~~5. Does my Will give away all of my assets? Do all assets go~~
4 ~~through probate? No. Money in a joint tenancy bank account~~
5 ~~automatically belongs to the other named owner without probate.~~
6 ~~If your spouse, domestic partner, or child is on the deed to your~~
7 ~~house as a joint tenant, the house automatically passes to him or~~
8 ~~her. Life insurance and retirement plan benefits may pass directly~~
9 ~~to the named beneficiary. A Will does not necessarily control how~~
10 ~~these types of "nonprobate" assets pass at your death.~~

11 ~~6. Are there different kinds of Wills? Yes. There are handwritten~~
12 ~~Wills, typewritten Wills, attorney prepared Wills, and statutory~~
13 ~~Wills. All are valid if done precisely as the law requires. You~~
14 ~~should see a lawyer if you do not want to use this statutory Will or~~
15 ~~if you do not understand this form.~~

16 ~~7. Who may use this Will? This Will is based on California law.~~
17 ~~It is designed only for California residents. You may use this form~~
18 ~~if you are single, married, a member of a domestic partnership, or~~
19 ~~divorced. You must be age 18 or older and of sound mind.~~

20 ~~8. Are there any reasons why I should NOT use this statutory~~
21 ~~Will? Yes. This is a simple Will. It is not designed to reduce death~~
22 ~~taxes or other taxes. Talk to a lawyer to do tax planning, especially~~
23 ~~if (i) your assets will be worth more than \$600,000 or the current~~
24 ~~amount excluded from estate tax under federal law at your death,~~
25 ~~(ii) you own business-related assets, (iii) you want to create a trust~~
26 ~~fund for your children's education or other purposes, (iv) you own~~
27 ~~assets in some other state, (v) you want to disinherit your spouse,~~
28 ~~domestic partner, or descendants, or (vi) you have valuable~~
29 ~~interests in pension or profit-sharing plans. You should talk to a~~
30 ~~lawyer who knows about estate planning if this Will does not meet~~
31 ~~your needs. This Will treats most adopted children like natural~~
32 ~~children. You should talk to a lawyer if you have stepchildren or~~
33 ~~foster children whom you have not adopted.~~

34 ~~9. May I add or cross out any words on this Will? No. If you do,~~
35 ~~the Will may be invalid or the court may ignore the crossed out or~~
36 ~~added words. You may only fill in the blanks. You may amend this~~
37 ~~Will by a separate document (called a codicil). Talk to a lawyer if~~
38 ~~you want to do something with your assets which is not allowed~~
39 ~~in this form.~~

1 ~~10. May I change my Will? Yes. A Will is not effective until you~~
2 ~~die. You may make and sign a new Will. You may change your Will~~
3 ~~at any time, but only by an amendment (called a codicil). You can~~
4 ~~give away or sell your assets before your death. Your Will only acts~~
5 ~~on what you own at death.~~

6 ~~11. Where should I keep my Will? After you and the witnesses~~
7 ~~sign the Will, keep your Will in your safe deposit box or other safe~~
8 ~~place. You should tell trusted family members where your Will is~~
9 ~~kept.~~

10 ~~12. When should I change my Will? You should make and sign~~
11 ~~a new Will if you marry, divorce, or terminate your domestic~~
12 ~~partnership after you sign this Will. Divorce, annulment, or~~
13 ~~termination of a domestic partnership automatically cancels all~~
14 ~~property stated to pass to a former husband, wife, or domestic~~
15 ~~partner under this Will, and revokes the designation of a former~~
16 ~~spouse or domestic partner as executor, custodian, or guardian.~~
17 ~~You should sign a new Will when you have more children, or if~~
18 ~~your spouse or a child dies, or a domestic partner dies or marries.~~
19 ~~You may want to change your Will if there is a large change in the~~
20 ~~value of your assets. You may also want to change your Will if you~~
21 ~~enter a domestic partnership or your domestic partnership has been~~
22 ~~terminated after you sign this Will.~~

23 ~~13. What can I do if I do not understand something in this Will?~~
24 ~~If there is anything in this Will you do not understand, ask a lawyer~~
25 ~~to explain it to you.~~

26 ~~14. What is an executor? An “executor” is the person you~~
27 ~~name to collect your assets, pay your debts and taxes, and~~
28 ~~distribute your assets as the court directs. It may be a person or it~~
29 ~~may be a qualified bank or trust company.~~

30 ~~15. Should I require a bond? You may require that an executor~~
31 ~~post a “bond.” A bond is a form of insurance to replace assets that~~
32 ~~may be mismanaged or stolen by the executor. The cost of the bond~~
33 ~~is paid from the estate’s assets.~~

34 ~~16. What is a guardian? Do I need to designate one? If you have~~
35 ~~children under age 18, you should designate a guardian of their~~
36 ~~“persons” to raise them.~~

37 ~~17. What is a custodian? Do I need to designate one? A~~
38 ~~“custodian” is a person you may designate to manage assets for~~
39 ~~someone (including a child) who is under the age of 26 and who~~
40 ~~receives assets under your Will. The custodian manages the assets~~

1 and pays as much as the custodian determines is proper for health,
2 support, maintenance, and education. The custodian delivers what
3 is left to the person when the person reaches the age you choose
4 (under 26). No bond is required of a custodian.

5 ~~18. Should I ask people if they are willing to serve before I~~
6 ~~designate them as executor, guardian, or custodian?~~ Probably yes.
7 ~~Some people and banks and trust companies may not consent to~~
8 ~~serve or may not be qualified to act.~~

9 ~~19. What happens if I make a gift in this Will to someone and~~
10 ~~they die before I do?~~ A person must survive you by 120 hours to
11 take a gift under this Will. If they do not, then the gift fails and goes
12 with the rest of your assets. If the person who does not survive you
13 is a relative of you or your spouse, then certain assets may go to
14 the relative's descendants.

15 ~~20. What is a trust?~~ There are many kinds of trusts, including
16 trusts created by Wills (called “testamentary trusts”) and trusts
17 created during your lifetime (called “revocable living trusts”).
18 Both kinds of trusts are long-term arrangements where a manager
19 (called a “trustee”) invests and manages assets for someone
20 (called a “beneficiary”) on the terms you specify. Trusts are too
21 complicated to be used in this statutory Will. You should see a
22 lawyer if you want to create a trust.

23 ~~21. What is a domestic partner?~~ You have a domestic partner
24 if you have met certain legal requirements and filed a form entitled
25 “Declaration of Domestic Partnership” with the Secretary of
26 State. Notwithstanding Section 299.6 of the Family Code, if you
27 have not filed a Declaration of Domestic Partnership with the
28 Secretary of State, you do not meet the required definition and
29 should not use the section of the Statutory Will form that refers to
30 domestic partners even if you have registered your domestic
31 partnership with another governmental entity. If you are unsure if
32 you have a domestic partner or if your domestic partnership meets
33 the required definition, please contact the Secretary of State's
34 office.

INSTRUCTIONS

37
38 1. ~~READ THE WILL.~~ Read the whole Will first. If you do not
39 understand something, ask a lawyer to explain it to you.

- 1 ~~2. *FILL IN THE BLANKS.* Fill in the blanks. Follow the~~
- 2 ~~instructions in the form carefully. Do not add any words to the Will~~
- 3 ~~(except for filling in blanks) or cross out any words.~~
- 4 ~~3. *DATE AND SIGN THE WILL AND HAVE TWO*~~
- 5 ~~*WITNESSES SIGN IT.* Date and sign the Will and have two~~
- 6 ~~witnesses sign it. You and the witnesses should read and follow the~~
- 7 ~~Notice to Witnesses found at the end of this Will.~~



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~~NOTE TO PRINTING OFFICE: INSERT CAMERA-READY
COPY HERE~~
~~for California Statutory Will~~
~~as printed on pages 40 to 45 of Chapter 893, 2001 Statutes.~~



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~~SEC. 2.~~

SECTION 1. Section 16337 of the Probate Code is amended to read:

16337. A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in Chapter 5 (commencing with Section 16500). For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

~~SEC. 3.~~

SEC. 2. Chapter 5 (commencing with Section 16500) is added to Part 4 of Division 9 of the Probate Code, to read:

CHAPTER 5. NOTICE OF PROPOSED ACTION BY TRUSTEE

16500. Subject to subdivision (d) of Section 16501, a trustee may give a notice of proposed action regarding a matter governed by Chapter 2 (commencing with Section 16200) or Chapter 3 (commencing with Section 16320) as provided in this chapter. For the purpose of this chapter, a proposed action includes a course of action or a decision not to take action. This chapter does not preclude an application or assertion of any other rights or remedies available to an interested party as otherwise provided in this part regarding an action to be taken or not to be taken by the trustee.

16501. (a) The trustee *who elects to provide notice pursuant to this chapter* shall mail notice of the proposed action to each of the following:

(1) A beneficiary who is receiving, or is entitled to receive, income under the trust, including a beneficiary who is entitled to receive income at the discretion of the trustee.

(2) A beneficiary who would receive a distribution of principal if the trust were terminated at the time the notice is given.

(b) Notice of proposed action is not required to be given to a person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(c) A trustee is not required to provide a copy of the notice of proposed action to a beneficiary who is known to the trustee but who cannot be located by the trustee after reasonable diligence or who is unknown to the trustee.

(d) Notwithstanding any other provision of this chapter, the trustee may not use a notice of proposed action in any of the following actions:

- (1) Allowance of the trustee's compensation.
- (2) Allowance of compensation of the attorney for the trustee.
- (3) Settlement of accounts.
- (4) Preliminary and final distributions and discharge.
- (5) Sale of property of the trust to the trustee or to the attorney for the trustee.
- (6) Exchange of property of the trust for property of the trustee or for property of the attorney for the trustee.
- (7) Grant of an option to purchase property of the trust to the trustee or to the attorney for the trustee.
- (8) Allowance, payment, or compromise of a claim of the trustee, or the attorney for the trustee, against the trust.
- (9) Compromise or settlement of a claim, action, or proceeding by the trust against the trustee or against the attorney for the trust.
- (10) Extension, renewal, or modification of the terms of a debt or other obligation of the trustee, or the attorney for the trustee, owing to or in favor of the trust.

16502. (a) The notice of proposed action shall state that it is given pursuant to this section and shall include all of the following:

- (1) The name and mailing address of the trustee.
- (2) The name and telephone number of a person who may be contacted for additional information.
- (3) A description of the action proposed to be taken and an explanation of the reasons for the action.
- (4) The time within which objections to the proposed action can be made, which shall be at least ~~30~~ 45 days from ~~the mailing receipt~~ of the notice of proposed action.
- (5) The date on or after which the proposed action may be taken or is effective.

(b) The notice of proposed action may be given using the most current Trustee Notice of Proposed Action form prescribed by the Judicial Council.

(c) If the most current form prescribed by the Judicial Council is not used to give notice of proposed action, the notice of proposed action shall satisfy all of the following requirements:

- (1) The notice of proposed action shall be in substantially the same form as the form prescribed by the Judicial Council.

1 (2) The notice of proposed action shall contain the statements
2 described in subdivision (a).

3 (3) The notice of proposed action shall contain a form for
4 objecting to the proposed action in substantially the form set out
5 in the Judicial Council form.

6 16503. (a) A beneficiary may object to the proposed action
7 by mailing a written objection to the trustee at the address stated
8 in the notice of proposed action within the time period specified
9 in the notice of proposed action.

10 (b) A trustee is not liable to a beneficiary for an action
11 regarding a matter governed by this part if the trustee does not
12 receive a written objection to the proposed action from ~~the~~ a
13 beneficiary within the applicable period and the other
14 requirements of this section are satisfied. If a *no* beneficiary
15 entitled to notice ~~does not object~~ *objects* under this section, the
16 trustee is not liable to any current or future beneficiary with respect
17 to the proposed action. *This subdivision does not apply to a person*
18 *who is a minor or an incompetent adult at the time of receiving the*
19 *notice of proposed action unless the notice is served on a guardian*
20 *or conservator of the estate of the person.*

21 (c) If the trustee receives a written objection within the
22 applicable period, either the trustee or a beneficiary may petition
23 the court to have the proposed action taken as proposed, taken with
24 modifications, or denied. In the proceeding, a beneficiary
25 objecting to the proposed action has the burden of proving that the
26 trustee's proposed action should not be taken. A beneficiary who
27 has not objected is not estopped from opposing the proposed action
28 in the proceeding.

29 (d) If the trustee decides not to implement the proposed action,
30 the trustee shall notify the beneficiaries of the decision not to take
31 the action and the reasons for the decision, and the trustee's
32 decision not to implement the proposed action does not itself give
33 rise to liability to any current or future beneficiary. A beneficiary
34 may petition the court to have the action taken, and has the burden
35 of proving that it should be taken.

36 16504. *This chapter does not require a trustee to use these*
37 *procedures prior to taking any action.*